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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**THIRD APPELLATE DISTRICT**

**(Yolo)**

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THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID ALLEN HILL,

Defendant and Appellant.

C046063

(Super. Ct. No. 006130)

Defendant David Allen Hill was placed on probation after pleading no contest to failure to appear, in violation of Penal Code section 1320, subdivision (b). On May 8, 2003, a petition for revocation of probation was filed, alleging defendant had failed to comply with the terms of his probation. Defendant admitted the violation of probation and requested reinstatement of probation. The trial court denied probation reinstatement and sentenced defendant to the low term of 16 months in state prison.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

Prior to receiving counsel's opening brief, we granted counsel's request to seek a belated certificate of probable cause pursuant to Penal Code section 1237.5 on the ground that defendant had not been advised of his right to an evidentiary hearing on the violation of probation allegations. The trial court granted the request for the certificate of probable cause. Thereafter, counsel filed a brief pursuant to *People v. Wende*, *supra*, 25 Cal.3d 436.

We note that the clerk's minutes indicate that defendant was advised of his right to a revocation hearing and waived his constitutional rights. We also note that the reporter's transcript, which does not include an advisement to defendant of his right to a revocation hearing, appears to be incomplete. Instead of beginning with the usual preliminary statements such as statements of appearance by counsel, the transcript begins with defense counsel indicating he had discussed the probation violations with defendant and proposing that defendant admit the violations with a low term cap and request reinstatement. Thus,

the transcript appears to begin at some point after the case was called by the court. In light of the foregoing, we shall presume on the record before us that defendant's appellate counsel had cause for not raising the issue of defendant's advisement of his right to an evidentiary hearing in the opening brief.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

### **DISPOSITION**

The judgment is affirmed.

\_\_\_\_\_, BUTZ, J.

We concur:

\_\_\_\_\_, BLEASE, Acting P. J.

\_\_\_\_\_, DAVIS, J.